

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1189

Introduced by Assembly Member Skinner

February 27, 2009

An act to amend Sections 156, ~~156.1, 156.3, and 156.4 of~~, and *156.1 of*, and to add Sections 156.5 and 156.6 to, *to repeal Section 156.4 of, and to repeal and add Section 156.3 of*, the Streets and Highways Code, relating to fish passages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1189, as amended, Skinner. Fish passages.

Existing law provides that the Department of Transportation has full possession and control of all state highways. Existing law requires the department to prepare an annual report to the Legislature describing the status of the department's progress in locating, assessing, and remediating barriers to fish passage, as defined. Existing law requires the department to complete assessments of potential barriers to the passage of anadromous fish prior to commencing *project design for any repair or construction* project using state or federal transportation funds *that affects certain stream crossings*. Existing law requires the department to submit the assessment to the Department of Fish and Game *and to be added add it* to the CALFISH database. Existing law requires *new* projects to be constructed without presenting barriers to fish passage. *Existing law also requires the department to complete an assessment for any repair or construction project using those funds that affects those stream crossings.*

This bill would define the ~~term~~ *terms* "barrier" and "project" for purposes of these provisions and would require the annual report

submitted to the Legislature by the department to include the precise location of past, current, or future remediation projects and a schedule for the remediation of existing barriers to anadromous fish passage. ~~The bill would require the department to prioritize remediation projects that complement planned or active restoration efforts. The bill would repeal the provisions requiring the department to perform an assessment for repair or construction projects using state or federal transportation funds that affect those stream crossings. The bill would recast provisions that require the department to complete an assessment of potential barriers to the passage of anadromous fish prior to commencing the project design for any maintenance project using state or federal transportation funds. The bill would require the assessment for a transportation project, as defined, that affects a stream crossing on a stream where anadromous fish are, or historically were, found and would require the assessment to include the status of barriers, as specified. The bill would require this assessment to be presented to relevant legislative committees as well as to the Department of Fish and Game and added to the California Fish Passage Assessment Database. It would provide that if a repair or maintenance project involves construction or retrofit of transportation infrastructure that creates a barrier, that barrier shall be remediated. The bill would require the department to remediate any barriers to fish passage associated with any project using state or federal transportation funds if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found. The bill would require remediation costs for these projects to be programmed into the state transportation improvement program or the state highway operation and protection program. The bill would require the department to provide notice to the Department of Fish and Game at least 6 month prior to initiating project design of any project and to post the notice in a conspicuous location on its Internet Web site. The bill would require the department and the Department of Fish and Game to, by March July 1, 2010, and annually thereafter, to jointly identify high-priority streams barriers in each district, as specified, and submit a report to the Legislature post a list of high-priority barriers in a conspicuous location on its Internet Web site. The bill would require the department to remediate barriers to fish passage using any federal funds received pursuant to the federal American Recovery and Reinvestment Act of 2009, to the extent permitted by federal law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 156 of the Streets and Highways Code is amended to read:

156. For purposes of this article, the following definitions shall apply:

(a) “Fish passage” means the ability of an anadromous fish to access appropriate habitat at all points in its life cycle, including spawning and rearing.

(b) “Department” means the Department of Transportation.

(c) “Barrier” means a complete, partial, or temporal obstruction or impediment to fish passage, including physical conditions associated with infrastructure that may impede passage.

(d) “Project” means any construction action that is state or federally funded, including, but not limited to, new construction, rehabilitations, repairs, retrofits, alterations, or maintenance projects eligible under the state transportation improvement program and the state highway operation and protection program, pursuant to Sections 14529 and 14526.5 of the Government Code, respectively.

SEC. 2. Section 156.1 of the Streets and Highways Code is amended to read:

156.1. The Director of Transportation shall prepare an annual report describing the status of the department’s progress in locating, assessing, and remediating barriers to fish passage on anadromous streams. The report shall include the precise location of past, current, or future remediation projects and a schedule for the remediation of existing fish barriers identified pursuant to Section 156.4 156.3. The report shall be given to the Legislature by October 31 of each year through the year 2020.

~~SEC. 3. Section 156.3 of the Streets and Highways Code is amended to read:~~

~~156.3. (a) For any project using state or federal transportation funds programmed after January 1, 2006, the department shall ensure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to~~

1 commencing project design. The department shall submit the
2 assessment to the Department of Fish and Game and add it to the
3 CALFISH database. If any structural barrier to passage exists,
4 remediation of the problem shall be designed into the project by
5 the implementing agency. New projects shall be constructed so
6 that they do not present a barrier to fish passage. When barriers to
7 fish passage are being addressed, plans and projects shall be
8 developed in consultation with the Department of Fish and Game.

9 (b) The department shall prioritize remediation projects that
10 complement planned or active restoration efforts.

11 SEC. 4. Section 156.4 of the Streets and Highways Code is
12 amended to read:

13 156.4. (a) For any repair, maintenance, or construction project
14 using state or federal transportation funds that affects a stream
15 crossing on a stream where anadromous fish are, or historically
16 were, found, the department shall perform an assessment of the
17 site for potential barriers to fish passage and submit the assessment
18 to the Department of Fish and Game and to the relevant legislative
19 committees of the Legislature. The assessment shall include the
20 status of each barrier, as follows:

21 (1) Not a barrier.

22 (2) Partial.

23 (3) Temporal.

24 (4) Temporal and partial.

25 (5) Temporal and total.

26 (6) Total.

27 (7) Unknown.

28 (b) Where a repair or maintenance project involves construction
29 or retrofit of transportation or related infrastructure, including
30 culverts or weirs, that directly creates a barrier, that barrier shall
31 be remediated.

32 SEC. 3. Section 156.3 of the Streets and Highways Code is
33 repealed.

34 156.3. For any project using state or federal transportation
35 funds programmed after January 1, 2006, the department shall
36 ensure that, if the project affects a stream crossing on a stream
37 where anadromous fish are, or historically were, found, an
38 assessment of potential barriers to fish passage is done prior to
39 commencing project design. The department shall submit the
40 assessment to the Department of Fish and Game and add it to the

~~CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the Department of Fish and Game.~~

SEC. 4. Section 156.3 is added to the Streets and Highways Code, to read:

156.3. (a) The department shall assess potential barriers to fish passage prior to commencing project design for any project programmed after January 1, 2006, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, as determined by the department in consultation with the Department of Fish and Game. The department shall use the Department of Fish and Game's assessment protocol and shall include the status of each barrier, as follows:

(1) Not a barrier.

(2) Partial.

(3) Temporal.

(4) Temporal and partial.

(5) Temporal and total.

(6) Total.

(7) Unknown.

(b) The department shall submit the results of the assessment required in subdivision (a) to the Department of Fish and Game and add them to the California Fish Passage Assessment Database.

(c) (1) The department shall remediate any barriers to fish passage associated with any project if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, as determined by the department in consultation with the Department of Fish and Game. Remediation shall be designed into the project and the costs of the remediation shall be programmed into the state transportation improvement program or the state highway operation and protection program. The department shall construct new projects so that they do not present a barrier to fish passage.

(2) The department shall provide notice to the Department of Fish and Game at least six months prior to initiating design of any project and post this notice in a conspicuous location on its Internet Web site.

1 (3) *Remediation plans shall be developed in consultation with*
2 *the Department of Fish and Game. The department shall provide*
3 *notice to the Department of Fish and Game of each remediated*
4 *barrier and include a description of each remediated project on*
5 *the California Fish Passage Assessment Database no less than 30*
6 *days after completion of the project.*

7 *SEC. 5. Section 156.4 of the Streets and Highways Code is*
8 *repealed.*

9 ~~156.4. For any repair or construction project using state or~~
10 ~~federal transportation funds that affects a stream crossing on a~~
11 ~~stream where anadromous fish are, or historically were, found, the~~
12 ~~department shall perform an assessment of the site for potential~~
13 ~~barriers to fish passage and submit the assessment to the~~
14 ~~Department of Fish and Game.~~

15 ~~SEC. 5.~~

16 *SEC. 6. Section 156.5 is added to the Streets and Highways*
17 *Code, to read:*

18 156.5. *The department and the Department of Fish and Game*
19 *shall, by March 1, 2010, jointly identify high-priority streams in*
20 *each district, based on the quality or quantity of fish habitat above*
21 *or below a barrier and other applicable factors, and shall submit a*
22 *report to the Legislature. shall, by July 1, 2010, and annually*
23 *thereafter, jointly identify high-priority barriers in each district,*
24 *based on the quality or quantity of fish habitat above or below a*
25 *barrier, and other applicable factors, including whether there are*
26 *planned or proposed anadromous fisheries restoration projects*
27 *in the same watershed. The department shall post a list of these*
28 *high-priority barriers, including any annual updates, in a*
29 *conspicuous location on its Internet Web site.*

30 ~~SEC. 6.~~

31 *SEC. 7. Section 156.6 is added to the Streets and Highways*
32 *Code, to read:*

33 156.6. *The department shall remediate barriers to fish passage*
34 *using any federal funds received pursuant to the federal American*
35 *Recovery and Reinvestment Act of 2009, to the extent permitted*
36 *by federal law.*